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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2012-0075]

Gypsy Moth Generally Infested Areas; Additions in Wisconsin

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the gypsy moth regulations by adding areas in Wisconsin to the list of generally infested areas based on the detection of infestations of gypsy moth in those areas. As a result of this action, the interstate movement of regulated articles from those areas is restricted. This action is necessary to prevent the artificial spread of the gypsy moth to noninfested areas of the United States.

DATES: This interim rule is effective [Insert date of publication in the Federal Register]. We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0075-0001>.

- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2012-0075, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0075> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Julie S. Spaulding, National Manager, Plant Health Programs, Plant Protection and Quarantine, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737; (301) 851-2184.

SUPPLEMENTARY INFORMATION:

Background

The gypsy moth, Lymantria dispar (Linnaeus), is a destructive pest of forest, shade, and commercial trees such as nursery stock and Christmas trees. The gypsy moth regulations (contained in 7 CFR 301.45 through 301.45-12 and referred to below as the regulations) restrict the interstate movement of regulated articles from generally infested areas to prevent the artificial spread of the gypsy moth.

In accordance with § 301.45-2 of the regulations, generally infested areas are, with certain exceptions, those States or portions of States in which a gypsy moth general infestation has been found by an inspector, or each portion of a State that the Administrator deems necessary to regulate because of its proximity to infestation or its inseparability for quarantine

enforcement purposes from infested localities. Less than an entire State will be designated as a generally infested area only if: (1) The State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of such articles; and (2) the designation of less than the entire State as a generally infested area will be adequate to prevent the artificial interstate spread of infestations of the gypsy moth.

Designation of Areas as Generally Infested Areas

Section 301.45-3 of the regulations lists generally infested areas. In this rule, we are amending § 301.45-3(a) by adding the following areas to the list of generally infested areas in Wisconsin: Bayfield, Clark, Jackson, and Price Counties, and all areas in Ashland County not already listed as generally infested areas. As a result of this rule, the interstate movement of regulated articles from these areas will be restricted.

We are taking this action because, in cooperation with the State of Wisconsin, the United States Department of Agriculture conducted surveys that detected multiple life stages of the gypsy moth in the areas to be added. Based on these surveys, we determined that reproducing populations exist at significant levels in these areas and that eradication is not feasible. Adding these areas to the existing generally infested areas in Wisconsin will help prevent the artificial spread of the gypsy moth.

Miscellaneous

In addition to the substantive changes described above, we are making some editorial changes to § 301.45-1. The program aid “Don’t Move Gypsy Moth” referenced in the definition for OHA document has been updated. As a result, we are changing the Program Aid Number from 1329 to 2065. In addition, we are revising footnote 2 in the definition of Treatment manual

to update the link to the Gypsy Moth Program Manual. We are changing the URL to http://www.aphis.usda.gov/import_export/plants/manuals/domestic/downloads/gypsy_moth.pdf.

Emergency Action

This rulemaking is necessary on an emergency basis because of the possibility that the gypsy moth could be artificially spread to noninfested areas of the United States, where it could cause economic losses due to the defoliation of susceptible forest and shade trees. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the Federal Register.

We will consider comments we receive during the comment period for this interim rule (see DATES above). After the comment period closes, we will publish another document in the Federal Register. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. The full analysis may be viewed on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov) or obtained from the person listed under FOR FURTHER INFORMATION CONTACT.

The State of Wisconsin has expanded the intrastate quarantine to include Ashland, Bayfield, Clark, Jackson, and Price Counties. This rule similarly expands the federally regulated

area. Regulated articles moved from gypsy moth quarantined areas are subject to inspection and certification to prevent spread of this pest.

Fifty-eight entities will be directly affected by this expansion of the quarantine area: 4 mills, 21 logger/hauler/yard operations, 31 Christmas tree growers, and 2 nurseries. We expect that most if not all of these businesses are small according to Small Business Administration size standards. The impact of this interim rule will not be significant. Businesses with compliance agreements can self-inspect regulated articles moved from quarantined areas. Many of the entities are already operating under compliance agreements. Businesses without compliance agreements can have inspection and certification services provided by State or Federal officials at no cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75-15 issued under Sec. 204, Title II, Public Law 106-113, 113 Stat. 1501A-293; sections 301.75-15 and 301.75-16 issued under Sec. 203, Title II, Public Law 106-224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. Section 301.45-1 is amended by revising the definition of OHA document and footnote 2 in the definition of Treatment manual to read as follows:

§ 301.45-1 Definitions.

* * * * *

OHA document. The self-inspection checklist portion of USDA–APHIS Program Aid Number 2065, “Don't Move Gypsy Moth,” completed and signed by the owner of an outdoor household article (OHA) affirming that the owner has inspected the OHA for life stages of gypsy moth in accordance with the procedures in the program aid.

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Treatment manual. * * *^{*2}

²The Gypsy Moth Program Manual may be viewed on the Internet at
http://www.aphis.usda.gov/import_export/plants/manuals/domestic/downloads/gypsy_moth.pdf.

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3. In § 301.45-3, paragraph (a), under the heading Wisconsin, the entry for Ashland County is revised and new entries for Bayfield County, Clark County, Jackson County, and Price County are added in alphabetical order to read as follows:

§ 301.45-3 Generally infested areas.

(a) * * *

Wisconsin

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Ashland County. The entire county.

Bayfield County. The entire county.

* * * * *

Clark County. The entire county.

* * * * *

Jackson County. The entire county.

* * * * *

Price County. The entire county.

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Done in Washington, DC, this 18th day of April 2013 .

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

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